

preparing an oil composition were independent and distinct and that a reference which anticipates one "would neither anticipate or make obvious the other inventions." Moreover, the PTO was of the view that claims to a food composition and claims to a method of preparing an oil composition "are capable of supporting their own patents." A copy of the restriction requirement issued on December 6, 2002 in U.S. 10/061,286 is attached. As the PTO has taken the position that a food product and a method of making an oil composition are patentably distinct, a conclusion of non-statutory obviousness-type double patenting is improper and this rejection should be withdrawn.

The rejection of claims 6-13 on the ground of non-statutory obviousness-type double patenting over claims 13-16 of U.S. 7,008,661 is respectfully traversed.

Claims 13-16 as well as claim 12 of U.S. 7,008,661 are directed to a food in which the oil/fat composition is as defined in claims 1 or 2 which are limited to 5-59.9 wt.% of diglyceride wherein 15-90 wt.% of the constituent fatty acids of the diglyceride are  $\omega$ 3-unsaturated fatty acids having **less than** 20 carbon atoms. None of the compositions described in U.S. 7,008,661, including the embodiments demonstrated by its examples comprise any acyl group containing diglyceride in which  $\omega$ 3 type unsaturated acyl groups having at least 20 carbon atoms are contained in an amount of from 15-89.5 wt. %.

In contrast, claims 6-13 of the above-identified application are defined by a diglyceride component in which 15-89.5% by weight of  $\omega$ 3 unsaturated acyl groups have **at least** 20 carbon atoms. Thus, in the presently claimed invention the diglyceride is described in terms of  $\omega$ 3 unsaturated fatty acids having **at least** 20 carbon atoms while in the claims of U.S. 7,008,661, the claims are defined by a diglyceride in which the  $\omega$ 3 unsaturated fatty acid has **less than 20 carbon atoms**. Since the prior art describes a composition having **less than 20 carbon atoms** it would not have been obvious to claim an  $\omega$ 3 unsaturated acyl group content having **at least 20 carbon atoms**. Claims 6-13 are not obvious over claims 12-16 of

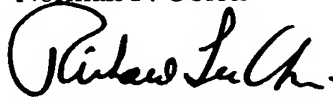
Application No. 10/761,358  
Reply to Office Action of April 19, 2006

U.S. 7,008,661. Withdrawal of the rejection under the ground of non-statutory obviousness-type double patenting is respectfully requested.

Applicants submit that this application is now in condition for allowance and early notification of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.  
Norman F. Oblon



---

Richard L. Chinn, Ph.D.  
Registration No. 34,305

Customer Number  
22850

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 03/06)

NFO:RLC\la